

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

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ADMINISTRATIVE HEARING
COMMISSION

MISSOURI STATE BOARD OF
REGISTRATION FOR THE HEALING ARTS,

Petitioner,

v.

GREGORY P. GENOVA, M.D.,

Respondent.

Case No. 03-0332HA

**JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE THE
ADMINISTRATIVE HEARING COMMISSION AND
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS,
AND CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission 1 CSR 15-2.150(1), and pursuant to the terms of § 536.060, RSMo, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo, Gregory P. Genova, M.D., Respondent, and the Missouri State Board of Registration for the Healing Arts (hereinafter "Board") waive their right to a hearing and decision of the above-styled case by the Administrative Hearing Commission and, additionally, the right to a disciplinary hearing before the State Board of Registration for the Healing Arts under § 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below in this Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Registration

for the Healing Arts, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law (hereinafter "Agreement").

1. Respondent, Gregory P. Genova, M.D., acknowledges that he understands the various rights and privileges afforded him by law and understands that this Agreement is in lieu of a contested case hearing by the Administrative Hearing Commission (hereinafter "Commission") where he would have the right to appear and be represented by counsel; the right to a hearing of the charges pending against Respondent; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against Respondent; the right to a ruling on questions of law by an administrative hearing commissioner; the right to seek recovery of attorney's fees and costs; the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline and the right to obtain judicial review of the decisions of the Commission and the Board. Having been advised of these rights provided Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and State Board of Registration for the Healing Arts, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.

2. Respondent acknowledges that he has received a copy of the Complaint filed with the Commission in this cause.

3. The parties stipulate and agree that the disciplinary order agreed to by Petitioner and Respondent in Part II herein is based only on the Joint Proposed Findings of Fact set out in Part I herein. Respondent understands that the Board may take further disciplinary action against Respondent based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered after the approval of this Agreement by the Commission. However, Respondent shall not be subject to any further disciplinary action by the Board regarding work excuses issued during the time period of June 2000 through March 2001.

4. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

5. Respondent understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Petitioner and Respondent herein jointly stipulate to the following Joint Proposed Findings of Fact and Joint Proposed Conclusions of Law and request that the Administrative Hearing Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (hereinafter "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.
2. Respondent is licensed by the Board as a physician and surgeon, license number R3C40. Respondent's license is current and active and was so at all times herein relevant.
3. On or about June 23, 2000, Chris Wyrick, an undercover investigator for Primesource Intelligence Group representing himself as a General Motors employee named "Harold Kaul," visited Respondent's office as a new patient and requested a work excuse.
4. Respondent attempted to take a patient history and provide "Harold Kaul" with a physical examination but "Harold Kaul" refused.
5. "Harold Kaul" agreed to make an appointment at a subsequent date for a physical examination.
6. "Harold Kaul" told Respondent that he was not ill during the period in question but needed a work excuse because he had missed two consecutive days of work at General Motors.

7. On or about June 23, 2000, Respondent provided "Harold Kaul" with a work excuse that stated he was unable to work from June 22, 2000, through June 26, 2000 (2 work days).

8. On or about November 2, 2000, James Geary, an undercover investigator for Primesource Intelligence Group representing himself as a General Motors employee named "Robert Lyle," visited Respondent's office as a new patient and requested a work excuse.

9. Respondent took a patient history from "Robert Lyle" and provided "Robert Lyle" with a partial physical evaluation, which was limited because of "Robert Lyle's" noncooperation.

10. "Robert Lyle" told Respondent that he was not ill during the period in question but needed a work excuse because he had missed two consecutive days of work while replacing the roof on his house.

11. On or about November 2, 2000, Respondent provided "Robert Lyle" with a work excuse stating that "Robert Lyle" was unable to work on October 31, 2000, and November 1, 2000. The work excuse further provided that "Robert Lyle" could return to work on November 2, 2000.

12. Based on the above facts, Respondent provided work excuses to "Harold Kaul" and "Robert Lyle" which indicated they were unable to work during specified dates when Respondent knew the "patients" were not ill during the specified dates.

13. Based on the above facts, Respondent's provision of work excuses to "Harold Kaul" and "Robert Lyle" constituted unprofessional conduct in the performance of the functions or duties of a physician, pursuant to Section 334.100.2(4) of the Revised Statutes of Missouri (2000).

JOINT PROPOSED CONCLUSIONS OF LAW

1. Based on the foregoing, Respondent's license is subject to disciplinary action pursuant to § 334.100.2(4) RSMo 2000, which provides in pertinent part:

2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(4) ... [U]nprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter ...

* * *

2. Respondent's conduct, as established by the foregoing facts, falls within the intendment of § 334.100.2(4) RSMo 2000.

3. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 334.100.2(4) RSMo 2000.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of § 621.110, RSMo. This disciplinary order will be effective

immediately upon the issuance of the Consent Order of the Administrative Hearing Commission approving this Agreement without further action by either party.

1. The medical license, No. R3C40, issued to Respondent is hereby PUBLICLY REPRIMANDED.

2. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by Respondent not specifically mentioned in this document. However, Respondent shall not be subject to any further disciplinary action by the Board regarding work excuses issued during the time period of June 2000 through March 2001.

3. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

4. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and State Board of Registration for the Healing Arts, and Consent Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the complaint filed by Petitioner in the above-styled case.

LICENSEE

Gregory P. Genova 6-26-03
Gregory P. Genova, M.D. Date

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Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF REGISTRATION FOR
THE HEALING ARTS,

Petitioner,

vs.

GREGORY P. GENOVA, M.D.,

Respondent.

No. 03-0332 HA

CONSENT ORDER


The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On July 9, 2003, the parties filed a "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Registration for the Healing Arts, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 334.100.2(4), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on July 11, 2003.


KAREN A. WINN
Commissioner